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Introduced and read first time: February 12, 2004

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Continuing Care Facilities - Internal Grievance Procedure**

3 FOR the purpose of requiring a provider of continuing care to include in a certain  
4 disclosure statement a description of the facility's internal grievance procedure;  
5 providing for the components of the internal grievance procedure; requiring  
6 certain continuing care agreements to state that there is an internal grievance  
7 procedure to investigate subscriber grievances; and generally relating to an  
8 internal grievance procedure for continuing care facilities.

9 BY repealing and reenacting, with amendments,

10 Article 70B - Department of Aging

11 Section 11C and 13

12 Annotated Code of Maryland

13 (2003 Replacement Volume)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article 70B - Department of Aging**

17 11C.

18 (a) (1) The provider shall furnish without cost to all prospective subscribers,  
19 before payment of any part of the entrance fee or, if earlier, the execution of a  
20 continuing care agreement, and annually to all subscribers on request, a disclosure  
21 statement for each facility of the provider holding a preliminary certificate of  
22 registration or a certificate of registration.

23 (2) The provider shall submit its initial disclosure statement to the  
24 Department for review at least 45 days before distributing the statement to any  
25 prospective subscribers.

1 (b) (1) The provider shall revise the disclosure statement annually and file  
2 the disclosure statement with the Department within 120 days after the end of the  
3 provider's fiscal year.

4 (2) The Department shall review the disclosure statement solely to  
5 ensure compliance with this section.

6 (c) The disclosure statement shall include:

7 (1) The name, address, and description of the facility and the name and  
8 address of any parent or subsidiary person;

9 (2) The organizational structure and management of the provider,  
10 including:

11 (i) If the provider is a corporation or limited liability company, the  
12 name of the corporation or limited liability company, the state in which the  
13 corporation is incorporated or the limited liability company is formed, and the name  
14 of the chief executive officer;

15 (ii) If the provider is a partnership, the names of the general  
16 partners, the state governing the formation of the partnership, and the name of the  
17 primary individual responsible for managing the partnership;

18 (iii) If the provider is an unincorporated association, the names of  
19 the members, the state governing the association's activities, and the name of the  
20 primary individual responsible for managing the association;

21 (iv) If the provider is a partnership having a corporation or limited  
22 liability company as one or more of its general partners, the name of the corporation  
23 or limited liability company, the state in which the corporation is incorporated or the  
24 limited liability company is formed, and the name of the chief executive officer;

25 (v) If the provider is a trust, the name of the trustee, the names of  
26 the owners of the beneficial interests in the trust, the state governing the trust, and  
27 the name of the primary individual responsible for overseeing the trust's activities;  
28 and

29 (vi) A statement regarding whether the provider is qualified, or  
30 intends to qualify, as a tax-exempt organization under the Internal Revenue Code;

31 (3) A statement regarding any affiliation of the provider with a religious,  
32 charitable, or other nonprofit organization, and the extent to which the organization  
33 is responsible for the financial and contractual obligations of the provider;

34 (4) A description of all basic fees, including entrance fees, fees for health  
35 related services, and periodic fees, collected by the provider from subscribers, setting  
36 forth the amount and frequency of the fee changes during each of the previous 5  
37 years. If the facility has been in operation less than 5 years, then the description shall  
38 be for each year that it has been in operation;

1 (5) A statement describing provisions that have been or will be made to  
2 comply with the operating reserve requirements as described in § 11B of this subtitle,  
3 and a general statement regarding the provider's investment policy related to the  
4 required reserves, including how often the reserve fund investment is reviewed and  
5 by whom;

6 (6) A copy of the most recent certified financial statement obtainable  
7 under generally accepted accounting principles;

8 (7) A description of the long-term financing for the facility;

9 (8) If the facility has not reached 85% occupancy of independent living  
10 units, a summary of the feasibility study;

11 (9) A cash flow forecast statement for the current and the next 2 fiscal  
12 years;

13 (10) The names and occupations of the officers, directors, trustees,  
14 managing or general partners, and any other persons with a 10% or greater equity or  
15 beneficial interest in the provider, and a description of the financial interest in or  
16 occupation with the provider;

17 (11) The name and address of any professional service firm, association,  
18 trust, partnership, company, or corporation in which a person identified in item (10)  
19 of this subsection has a 10% or greater financial interest and which is anticipated to  
20 provide goods, premises, or services to the facility or provider of a value of \$10,000 or  
21 more within any fiscal year, including a description of the goods, premises, or services  
22 and their anticipated cost to the facility or provider. However, the disclosure of salary,  
23 wage, or benefit information of employees of the provider is not required;

24 (12) The name of the proposed manager or management company if the  
25 facility is or will be managed on a day-to-day basis by a person other than an  
26 individual directly employed by the provider, and a description of the business  
27 experience, if any, of the manager or company in the operation or management of  
28 similar facilities;

29 (13) A description of any matter in which an individual identified in item  
30 (10) of this subsection:

31 (i) Has been convicted of a felony or pleaded nolo contendere to a  
32 felony charge, if the felony involved fraud, embezzlement, fraudulent conversion, or  
33 misappropriation of property;

34 (ii) Has been held liable or enjoined in a civil action by final  
35 judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or  
36 misappropriation as a fiduciary; or

37 (iii) Has been subject to an effective injunctive or restrictive order of  
38 a court of record or, within the past 10 years, had any State or federal license or  
39 permit suspended or revoked as a result of an action brought by a governmental

1 agency, arising out of or relating to business activity or health care, including actions  
2 affecting a license to operate any facility or service for aging, impaired, or dependent  
3 persons;

4 (14) A description of the form of governance of the provider, including the  
5 composition of the governing body, and a statement that the provider shall satisfy the  
6 requirements of § 11A of this subtitle;

7 (15) If applicable, a description of the conditions under which the provider  
8 may be issued a certificate of registration and may use escrowed deposits, and a  
9 statement of the amount of the subscriber's deposit that may be used;

10 (16) A summary of the basic services provided or proposed to be provided  
11 at the facility under the continuing care agreement, including the extent to which  
12 health related services are furnished, that clearly states which services are indicated  
13 in the agreement as included in the basic fee or fees and which services are or will be  
14 made available at or by the facility at an extra charge;

15 (17) A statement that the provider shall amend its disclosure statement if,  
16 at any time, in the opinion of the provider or the Department, an amendment is  
17 necessary to prevent the disclosure statement from containing any material  
18 misstatement of fact required by this section to be stated in the disclosure statement  
19 or omission of a material fact required by this section to be stated in the disclosure  
20 statement;

21 (18) A description of any activity involving a renovation or an expansion,  
22 whether or not subject to Department review, during the preceding fiscal year or  
23 proposed for the current fiscal year;

24 (19) A statement if it is the provider's policy to impose a surcharge on  
25 some, but not all, subscribers because of some condition or circumstance and that the  
26 surcharge will not be considered part of the entrance fee in the statutory refund  
27 under § 15 of this subtitle;

28 (20) A description of the existence and role of the resident association;  
29 [and]

30 (21) A DESCRIPTION OF THE INTERNAL GRIEVANCE PROCEDURE,  
31 INCLUDING:

32 (I) THE OPPORTUNITY FOR A SUBSCRIBER TO SUBMIT A WRITTEN  
33 GRIEVANCE IN ANY FORM TO THE PROVIDER;

34 (II) PROMPT INVESTIGATION OF A SUBSCRIBER'S GRIEVANCE AND  
35 A HEARING IN NECESSARY SITUATIONS;

36 (III) THE MANNER IN WHICH THE CAUSE OF A GRIEVANCE WILL BE  
37 OR ATTEMPT TO BE ALLEVIATED OR REMEDIED DURING AN INVESTIGATION OF A  
38 GRIEVANCE;

1 (IV) THE REQUIRED PARTICIPATION OF ONE OR MORE INDIVIDUALS  
2 AUTHORIZED BY THE PROVIDER TO TAKE CORRECTIVE ACTION TO REMEDY THE  
3 CAUSE OF A GRIEVANCE;

4 (V) THE RIGHT OF THE SUBSCRIBER WHO SUBMITTED THE  
5 GRIEVANCE AND OF OTHER SUBSCRIBERS ON BEHALF OF THE AGGRIEVED  
6 SUBSCRIBER TO PARTICIPATE IN THE GRIEVANCE PROCEDURE;

7 (VI) THE RIGHT OF A SUBSCRIBER WHO SUBMITTED A GRIEVANCE  
8 TO BE NOTIFIED OF THE DISPOSITION OF THE SUBSCRIBER'S GRIEVANCE AND ANY  
9 CORRECTIVE ACTION TAKEN; AND

10 (VII) THE RIGHT OF SUBSCRIBERS TO ESTABLISH AND PARTICIPATE  
11 ON A SUBSCRIBER GRIEVANCE PANEL THAT:

12 1. IS COMPOSED OF SUBSCRIBERS ONLY;

13 2. PRESENTS GRIEVANCES TO THE PROVIDER, FACILITY  
14 MANAGERS, ADMINISTRATORS, OR STAFF, PUBLIC OFFICIALS, AND ANY OTHER  
15 INDIVIDUALS ON BEHALF OF A SUBSCRIBER; AND

16 3. WORKS WITH THE PROVIDER, FACILITY MANAGERS,  
17 ADMINISTRATORS, AND STAFF OR ANY OTHER INDIVIDUALS WITHIN OR OUTSIDE  
18 THE FACILITY TO IMPROVE THE QUALITY OF CARE FOR SUBSCRIBERS; AND

19 [(21)] (22) Such other material information concerning the facility or the  
20 provider as the Department requires or that the provider wishes to include.

21 (d) The disclosure statement shall contain a cover page that states, in a  
22 prominent location and type face, the date of the disclosure statement and that the  
23 issuance of a certificate of registration does not constitute approval, recommendation,  
24 or endorsement of the facility by the Department, nor is it evidence of, or does it attest  
25 to, the accuracy or completeness of the information set out in the disclosure  
26 statement.

27 (e) Any amended disclosure statement:

28 (1) Shall be filed with the Department at the same time that it is  
29 delivered to any subscriber or prospective subscriber; and

30 (2) Is subject to all the requirements of this subtitle.

31 (f) (1) In addition to any other requirements of this section, if a provider's  
32 continuing care agreement includes a provision to provide assisted living program  
33 services and the provider does not execute a separate assisted living agreement, the  
34 disclosure statement shall contain with regard to the assisted living program:

35 (i) The name and address and a description of each facility that the  
36 provider operates;

- 1 (ii) A statement regarding the relationship of the provider to other  
2 providers or services if the relationship affects the care of the resident;
- 3 (iii) A description of any special programming, staffing, and training  
4 provided by the program for individuals with particular needs or conditions such as  
5 cognitive impairment;
- 6 (iv) Notice of:
- 7 1. The availability of locks for storage;
- 8 2. The availability of locks, if any, for the subscriber's room;
- 9 3. The security procedures which the provider shall  
10 implement to protect the subscriber and the subscriber's property; and
- 11 4. The provider's right, if any, to enter a subscriber's room;
- 12 (v) A statement of the obligations of the provider, the subscriber, or  
13 the subscriber's agent as to:
- 14 1. Arranging for or overseeing medical care;
- 15 2. Monitoring the health status of the subscriber;
- 16 3. Purchasing or renting essential or desired equipment and  
17 supplies; and
- 18 4. Ascertaining the cost of and purchasing durable medical  
19 equipment;
- 20 (vi) An explanation of the assisted living program's complaint or  
21 grievance procedure; and
- 22 (vii) Notice of any material changes in the assisted living program.
- 23 (2) The provider shall:
- 24 (i) Furnish annually without cost to each subscriber revisions to  
25 the disclosure statement provisions under paragraph (1) of this subsection;
- 26 (ii) Ensure that each subscriber, or the subscriber's agent, initials  
27 the revised disclosure statement to indicate acknowledgment of the revisions; and
- 28 (iii) Make available a copy of each initialed disclosure statement for  
29 inspection by the Department of Health and Mental Hygiene under Title 19, Subtitle  
30 18, of the Health - General Article.

1 13.

2 (a) In addition to such other provisions as may be considered proper to  
3 effectuate the purpose of any continuing care agreement, each agreement executed  
4 between a subscriber and a provider shall, in a form acceptable to the Department:

5 (1) Show the total consideration paid by the subscriber for continuing  
6 care including the value of all property transferred, donations, entrance fees,  
7 subscriptions, monthly fees, and any other fees paid or payable by or on behalf of a  
8 subscriber;

9 (2) Specify all services such as food, shelter, medical care, nursing care,  
10 or other health related services, which are to be provided by the provider to each  
11 subscriber, including in detail all items which each subscriber will receive, whether  
12 the items will be provided for a designated time period or for life;

13 (3) Designate the classes of subscribers according to types of payment  
14 plans;

15 (4) Describe the procedures to be followed by the provider when the  
16 provider temporarily or permanently changes the subscriber's accommodation within  
17 the facility or transfers the subscriber to another health facility, but a subscriber's  
18 accommodations shall be changed only for the protection of the health or safety of the  
19 subscriber or the general and economic welfare of the residents;

20 (5) Describe the policies that will be implemented in the event the  
21 subscriber becomes unable to meet the monthly fees;

22 (6) State the policy of the provider with regard to changes in  
23 accommodations and the procedure to be followed to implement that policy in the  
24 event of an increase or decrease in the number of persons occupying an individual  
25 unit;

26 (7) Provide in clear and understandable language, boldface type, and in  
27 the largest type used in the body of the agreement, the terms governing the refund of  
28 any portion of the entrance fee in the event of discharge by the provider or  
29 cancellation by the subscriber;

30 (8) State the terms under which an agreement is canceled by the death  
31 of the subscriber;

32 (9) Provide in clear and understandable language, boldface type, and in  
33 the largest type used in the agreement, whether or not monthly fees, if charged, will  
34 be subject to periodic increases;

35 (10) Provide that charges for care paid in advance in 1 lump sum only  
36 shall not be increased or changed during the duration of the agreed upon care;

37 (11) State which funeral and burial services, if any, will be provided by the  
38 provider;

- 1           (12)     Give a description of the living quarters;
- 2           (13)     State the conditions, if any, under which a unit may be assigned to  
3 the use of another by the subscriber;
- 4           (14)     State the religious or charitable affiliations of the provider and the  
5 extent, if any, to which the affiliate organization will be responsible for the financial  
6 and contractual obligations of the provider;
- 7           (15)     State the subscriber's and provider's respective rights and obligations  
8 as to use of the facility and as to real and personal property of the subscriber placed  
9 in the custody of the provider;
- 10          (16)     State that the subscribers shall have the right to organize and  
11 operate a subscriber association at the facility and to meet privately to conduct  
12 business;
- 13          (17)     STATE THAT THERE IS AN INTERNAL GRIEVANCE PROCEDURE TO  
14 INVESTIGATE THE GRIEVANCES OF SUBSCRIBERS;
- 15          [(17)]    (18)     State what, if any, fee adjustments will be made in the event  
16 the subscriber is voluntarily absent from the facility for an extended period of time;
- 17          [(18)]    (19)     Specify the circumstances, if any, under which the subscriber  
18 will be required to apply for Medicaid, Medicare, public assistance, or any public  
19 benefit program and whether or not the facility is a participant in Medicare or  
20 medical assistance;
- 21          [(19)]    (20)     State that the subscriber has received and reviewed the latest  
22 certified financial statement and that a copy of the certified financial statement was  
23 received at least 2 weeks before signing the agreement;
- 24          [(20)]    (21)     Provide that the facility will make available to the subscriber,  
25 upon request, any certified financial statement transmitted to the Department;
- 26          [(21)]    (22)     Where applicable, describe the conditions under which the  
27 provider may be issued a certificate of registration, describe the conditions under  
28 which the provider may use escrowed deposits, and state the amount of the  
29 subscriber's deposit that may be used upon issuance of a certificate of registration;
- 30          [(22)]    (23)     State that fees collected by a provider under the terms of a  
31 continuing care agreement may not be used for purposes other than those set forth in  
32 the agreement;
- 33          [(23)]    (24)     Allow a subscriber to designate a beneficiary for receipt of  
34 any refundable portion of the entrance fee, if:
- 35                 (i)     The designation is in writing;

1 (ii) The designation is witnessed by two or more competent  
2 witnesses;

3 (iii) The designation is noncontingent; and

4 (iv) The designation is specified in percentages and accounts for 100  
5 percent of the refund due; and

6 [(24)] (25) Contain the following statement in boldface type, and in the  
7 largest type used in the agreement: "A preliminary certificate of registration or  
8 certificate of registration is not an endorsement or guarantee of this facility by the  
9 State of Maryland. The Maryland Department of Aging urges you to consult with an  
10 attorney and a suitable financial advisor before signing any documents."

11 (b) Except as provided in subsection [(a)(23)] (A)(24) of this section, a  
12 requirement of this section shall not apply to any continuing care agreements entered  
13 into before the effective date of the requirement.

14 (c) The provider shall maintain the continuing care agreement on site and  
15 make it available for inspection by the Department of Health and Mental Hygiene  
16 under Title 19, Subtitle 18, of the Health - General Article.

17 (d) In addition to any other requirements of this section, if a provider's  
18 continuing care agreement includes a provision to provide assisted living program  
19 services and the provider does not execute a separate assisted living agreement, each  
20 continuing care agreement executed between a subscriber and a provider shall  
21 include with regard to the assisted living program:

22 (1) A statement of the level of care for which the assisted living program  
23 is licensed;

24 (2) As part of the procedures to be followed under subsection (a)(4) of this  
25 section, if the subscriber is transferred to an assisted living program, the procedures  
26 to be followed by the provider for notifying the subscriber of the level of care needed  
27 by the subscriber;

28 (3) A statement indicating the options available to a subscriber if the  
29 subscriber's level of care, after admission to an assisted living program, exceeds the  
30 level of care for which the provider is licensed;

31 (4) Based on a sample list of assisted living program services maintained  
32 by the Department of Health and Mental Hygiene, a statement of those services  
33 provided by the assisted living program and those services not provided by the  
34 assisted living program;

35 (5) A statement of the obligations of the provider and the subscriber or  
36 the subscriber's agent as to handling the finances of the subscriber;

1           (6)     A statement of the obligations of the provider and the subscriber or  
2 the subscriber's agent as to disposition of the subscriber's property upon discharge or  
3 death of the subscriber; and

4           (7)     The applicable rate structure and payment provisions covering:

5                   (i)     All rates to be charged to the subscriber, including:

6                           1.     Service packages;

7                           2.     Fee-for-service rates; and

8                           3.     Any other nonservice-related charges;

9                   (ii)     Criteria to be used for imposing additional charges for the  
10 provision of additional services, if the subscriber's service and care needs change;

11                   (iii)     Payment arrangements and fees, if known, for third-party  
12 services not covered by the continuing care agreement, but arranged for by either the  
13 subscriber, the subscriber's agent, or the assisted living program;

14                   (iv)     Identification of the persons responsible for payment of all fees  
15 and charges and a clear indication of whether the person's responsibility is or is not  
16 limited to the extent of the subscriber's funds;

17                   (v)     A provision for at least 45 days' notice of any rate increase,  
18 except if necessitated by a change in the subscriber's medical condition; and

19                   (vi)     Fair and reasonable billing and payment policies.

20     (e)     (1)     If a provider's feasibility study has been approved under § 10 of this  
21 subheading, the Department shall decide whether to approve a continuing care  
22 agreement within 180 days of receipt of a complete agreement.

23                   (2)     If the Department takes no action within 180 days, the agreement is  
24 deemed approved.

25     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
26 effect October 1, 2004.